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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 PREMIER PRODUCE COMPANY, INC.,
12 Plaintiff,
13 vs.
14 MIA'S NUTRITION CENTER, INC., *et al.*,
15 Defendants.

CASE NO. 11-CV-2162 BEN (JMA)

**ORDER GRANTING EX PARTE
APPLICATION TO AMEND
TEMPORARY RESTRAINING
ORDER**

[Docket No. 7]

16 On September 19, 2011, Plaintiff Premier Produce Company initiated this action against
17 Defendants Mia's Nutrition Centers, Inc., John Christian Gillette, and Lisa A. Gillette for alleged
18 violation of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499e. (Docket No.
19 1.) At the same time, Plaintiff filed an *Ex Parte* Application for Temporary Restraining Order to
20 enjoin Defendants from transferring all PACA assets until Defendants pay Plaintiff \$3,043.11, plus
21 interest, attorney fees, and costs. (Docket No. 3.) The Court denied Plaintiff's *ex parte* application
22 for a temporary restraining order because (1) Plaintiff failed to present specific facts showing that the
23 trust assets will be dissipated immediately, before Defendants may be heard in opposition, and (2)
24 Plaintiff's attorney did not certify in writing that any effort was made to give notice, or why notice
25 should not be required. (Docket No. 4.) On September 20, 2011, Plaintiff filed a second *Ex Parte*
26 Application for Temporary Restraining Order. (Docket No. 5.) This second *Ex Parte* Application
27 was granted on September 21, 2011, because Plaintiff corrected the deficiencies the Court noted in the
28 first *Ex Parte* Application. (Docket No. 6.)

1 Presently before the Court is Plaintiff's *Ex Parte* Application to Amend the Temporary
2 Restraining Order. (Docket No. 7.) The September 21 Order provides:

3 It is hereby ordered that Defendants, their customers, agents, officers, subsidiaries,
4 assigns, and banking institutions, shall not alienate, dissipate, pay over or assign any
5 assets of *Mia's Nutrition Center*, or its subsidiaries or related companies, except in the
6 ordinary course of business until further order of this Court or until Defendants pay
Plaintiff the sum of \$3,043.11 by cashiers' check or certified check, at which time this
Order is dissolved.

7 (Sept. 21 Order, at 3 (emphasis added).) Plaintiff seeks to amend the September 21 Order to provide
8 that "funds of *Defendants John Christian Gillette and Lisa A Gillette* shall, along with company funds,
9 if any, shall be paid over to the Plaintiff until the sum of \$3,043.11, plus statutory interest and attorney
10 fees is, paid in full." (Pl. Mot. at 4 (emphasis added).) Plaintiff argues that "[a]s the 2 sole
11 shareholders and corporate officers of the companies and as the persons responsible for the day-to-day
12 operations of Mia Nutrition Centers, Defendants John Christian Gillette and Lisa A. Gillette were in
13 a position of control over the PACA trust assets belonging to the Plaintiff and are therefore personally
14 liable for the debt owed to the Plaintiff by their companies." (Pl. Mot. at 2.) Plaintiff also submits
15 evidence that John Christian Gillette and Lisa A. Gillette are the two sole officers of Mia's Nutrition
16 Centers. (Pl. Mot., Exh. C.)

17 Plaintiff's Motion is **GRANTED**. See *Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280, 283 (9th
18 Cir. 1997) ("[I]ndividual shareholders, officers, or directors of a corporation who are in a position to
19 control PACA trust assets, and who breach their fiduciary duty to preserve those assets, may be held
20 personally liable under the Act."). Page 3, lines 2 to 6, of the September 21 Order is amended as
21 follows:
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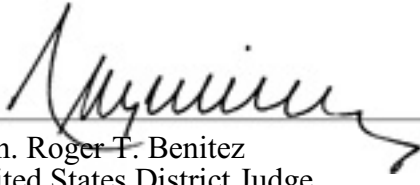
23 It is hereby ordered that Defendants, their customers, agents, officers, subsidiaries,
24 assigns, and banking institutions, shall not alienate, dissipate, pay over or assign any
25 assets of Mia's Nutrition Center, or its subsidiaries or related companies, except in the
26 ordinary course of business, or of John Christian Gillette or Lisa A. Gillette, until further
order of this Court or until Defendants pay Plaintiff the sum of \$ 3,043.11 by cashiers'
check or certified check, at which time this Order is dissolved.¹

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28 ¹ In a proposed order, Plaintiff made additional changes to the language found in the
September 21 Order. Plaintiff, however, has not supported these changes with any evidence or
legal authority. Accordingly, these changes have not been incorporated in the amended language.

1 All other provisions contained in the September 21 Order shall remain in full force and effect. Further
2 amendments to the September 21 Order will not be made prior to the September 28, 2011 hearing
3 without good cause.

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5 **IT IS SO ORDERED.**

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7 DATED: September 22, 2011

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10 Hon. Roger T. Benitez
11 United States District Judge
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